

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Verizon for Forbearance from)	
The Prohibition of Sharing Operating,)	
Installation, and Maintenance Functions)	CC Docket No. 96-149
Under Section 53.203(a)(2) of the)	
Commission's Rules)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)² and pursuant to sections 1.415 and 1.419 of the Commission's rules,³ hereby submits its comments on the Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules (Petition). In its Petition, Verizon seeks forbearance from being required to comply with the Commission's rules that prohibit the sharing of operating, installation, and maintenance (OIM) services between a former Bell operating company (BOC) and a Section 272 separate long distance affiliate. In its comments filed in the *BOC Separate Affiliate Sunset* proceeding,⁴ USTA advocated for immediate elimination of the

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Public Notice*, CC Docket No. 96-149, DA 02-1989 (rel. Aug. 9, 2002) soliciting comment on the Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules.

³ 47 C.F.R. §§1.415 and 1.419.

⁴ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, FCC 02-148, Notice of Proposed Rulemaking (rel. May 24, 2002) (*BOC Separate Affiliate Sunset*).

Commission's OIM rules⁵ because they are not statutorily required by the Telecommunications Act of 1996 (1996 Act) and they competitively disadvantage BOCs.⁶ Accordingly, USTA again urges the Commission to rescind its OIM rules. If the Commission disagrees and does not rescind these rules, USTA urges the Commission to grant the requested relief for forbearance as appropriate because the OIM rules are superfluous and unnecessary and because the conditions for forbearance have been met.

DISCUSSION

In its comments in the *BOC Separate Affiliate Sunset* proceeding, USTA noted that although the Commission associates the OIM rules with the "operate independently" requirement of Section 272(b)(1), the 1996 Act did not compel the Commission to develop and impose the OIM rules.⁷ As support, USTA cited the Commission's own finding in the *Non-Accounting Safeguards of Sections 271 and 272* proceeding in which the Commission stated that the "[1996] Act does not elaborate on the meaning of the phrase 'operate independently.'"⁸ Yet, the Commission chose to interpret that phrase to prohibit shared operation, installation, and maintenance "in order to protect against the potential for a BOC to discriminate in favor of a section 272 affiliate in a manner that results in the affiliate's competitors operating less efficiently."⁹ This interpretation did not appropriately take into consideration the protections against discrimination that already existed in Sections 272(b)(2)-(5), as well as the protections of Sections 202, 251, and 272(e)(3), which will remain after the sunset of the BOCs' separate affiliate obligations, and thus the true necessity for the OIM rules. USTA maintains that the

⁵ See 47 C.F.R. §§53.203(a)(2) and (3).

⁶ See USTA Comments, *BOC Separate Affiliate Sunset*, Aug. 5, 2002 at 4, 8-9.

⁷ *Id.* at 8.

⁸ *Id.* at 8-9, citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21978 (1996) (*Non-Accounting Safeguards of Sections 271 and 272*).

Commission's justification for implementing the OIM rules was vague and insufficiently supported and that there is no reason, even now, to maintain the rules. Accordingly, USTA urges the Commission to rescind immediately its OIM rules.

If the Commission disagrees and does not rescind the OIM rules, USTA urges the Commission to forbear from requiring compliance with the rules because they are superfluous and unnecessary and they hinder competition. USTA advocates that forbearance is appropriate because the conditions of Section 10 of the Communications Act (Act) are met. The OIM rules are not necessary to prevent discrimination or to protect consumers, rather forbearance would actually benefit consumers by fostering competition. Accordingly, forbearance is in the public interest.

The OIM rules are not necessary to prevent discrimination. Even after forbearance, numerous sections of the Act would remain in place to guard against discrimination in charges, practices, classifications, or regulations. Notably, until BOCs' separate affiliate obligations sunset, the structural and transactional requirements of Sections 272(b)(2)-(5) continue to apply. After sunset of the BOCs' separate affiliate obligations, BOCs are still be obligated to comply with the cost accounting rules and imputation standards of Section 272(e)(3). Beyond these obligations, BOCs remain bound by the non-discrimination provisions of Sections 202 and 251.

The OIM rules are not necessary to protect consumers. In fact, the imposition of these rules has had the opposite effect. These rules cause BOCs to incur duplicative costs because the long distance affiliates must replicate personnel to handle provisioning, maintenance, and repair work that could be handled more efficiently by the BOCs' local exchange carrier (LEC)

⁹ *Id.* at 9, citing *Non-Accounting Safeguards of Sections 271 and 272*, 11 FCC Rcd 21905, 21981.

employees.¹⁰ In addition, BOCs incur duplicative costs to develop and operate separate operating support systems, network operating control systems, and back office provisioning functions for their long distance affiliates when the work of those systems and functions could be performed more efficiently by the BOCs' LEC systems and functions.¹¹ Duplicative costs such as these result in higher costs that consumers must pay because the BOCs have been forced to operate their network and resources inefficiently. Moreover, customers that obtain both local and long distance services from BOCs are likely to receive less efficient and less responsive customer service because the BOCs cannot offer integrated customer service. The BOCs must deploy different service teams to respond to different aspects of the customers' needs and problems when what the customers really need is integrated service and solutions. Importantly, BOCs' competitors are not required to operate in such inefficient ways and there is no reason why the BOCs should have to do so either.

In short, the requirement that BOCs continue to comply with the OIM rules prohibits BOCs from offering competitive, integrated services at competitive prices when there is no potential for discriminatory harm that could result from forbearance. As a result, customers

¹⁰ See Petition at 3.

¹¹ See Petition at 3.

suffer. For these reasons, forbearance is in the public interest and the relief requested in the Petition should be granted.

Respectfully submitted,

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